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No. 90-8466

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1990

* * * * *

DAVID E. RIGGINS, Petitioner,

vs.

STATE OF NEVADA, Respondent.

REPLY BRIEF TO BRIEF IN OPPOSITION

TO PETITION FOR WRIT OF CERTIORARI

TO THE SUPREME COURT OF THE STATE OF NEVADA

Respectfully Submitted,

Mace J. Yampolsky

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QUESTION PRESENTED FOR REVIEW

Whether forced medication during trial violated
Petitioner's constitutional right to a full and fair trial.

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STATEMENT OF THE CASE

Petitioner reasserts the statement of the case as set forth in the original Petition for Writ of Certiorari.

STATEMENT OF THE FACTS

Petitioner reasserts the statement of the facts as set forth in the original Petition for Writ of Certiorari, however, Petitioner disagrees with various segments of Respondent's statement of the facts. Respondent alleges that Psychiatrist Dr. Edward Quass stated that Petitioner RIGGINS' appearance in court was not noticeably different from his unmedicated condition. How Dr. Quass could make

such a statement is unknown to Petitioner, as Dr. Quass did not even examine Petitioner RIGGINS during the trial.

Respondent also alleges that Psychiatrist Dr. Franklin Master noted that the 800mg dosage of Mellaril administered to Petitioner at trial could have been a result of his increased tolerance to the medication because of extended use of Mellaril and additional drug abuse. Dr. Master never mentioned drug abuse. At the hearing on the Motion to Terminate the Administration of Medication, Dr. Master explained that he did not know why Petitioner's dosage had been increased to 800mg per day from 450mg per day, but that he assumed that whoever increased it must have seen a reason to increase it. He did not mention the effects drug abuse would have on an individual's tolerance to Mellaril, however he did state that he believed taking RIGGINS off the Mellaril would have no noticeable effect.

The State failed to mention Dr. Jack Jurasky's statement during trial that RIGGINS may have a tolerance for certain narcotics, but not necessarily for Mellaril (ROA 256). Dr. Jurasky also stated that injecting cocaine would release whatever is pathological in DAVID RIGGINS (ROA 249).

ISSUE ADDRESSED IN REBUTTAL

I. WHETHER FORCED MEDICATION DURING TRIAL VIOLATED PETITIONER'S CONSTITUTIONAL RIGHT TO A "FULL AND FAIR" TRIAL

Petitioner RIGGINS was under the influence of 800

1 milligrams of Mellaril throughout his trial. This
2 medication violated his right to be free from bodily
3 restraint, and ultimately his right to a "full and fair"
4 trial. Throughout the State's Brief in Opposition to
5 Petitioner's Writ of Certiorari, the State continuously
6 referred to the competency of Petitioner RIGGINS.
7 Competency is not the issue. The State has failed to
8 address the correct issue in it's Brief in Opposition to
9 Petitioner for Writ of Certiorari.

10 The State begins by citing Ybarra v. State, 103 Nev.8,
11 731 P.2d 353 (1987), cert. denied, 470 U.S. 1009, 105 S.Ct.
12 1372, 84 L.Ed.2d 390 (1985). The State's reliance on Ybarra
13 is misplaced. The issue in Ybarra was whether competency
14 can be attained through the use of medication. This is not
15 the issue in the present case. RIGGINS was deemed competent
16 to stand trial. The issue in the case at bar is whether
17 forced medication during trial deprives one of their
18 constitutional right to a "full and fair trial".

19 The State next relies on State v. Jojola, 89 N.M. 489,
20 553 P.2d 1296 (N.M. Ct.App. 1976). Reliance on this case is
21 also misplaced. The Court in Jojola conceded that in
22 certain cases courtroom demeanor would be relevant in issues
23 -decided by the jury, such as the insanity defense, and the
24 penalty for first degree murder. Id. at 1300. The case at
25 bar is an insanity defense, and thus would meet the standard
26 in Jojola as being a case in which the defendant's demeanor
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1 is relevant.

2 The State tries to distinguish State v. Murphy, 56
3 Wash.2d 761, 355 P.2d 323 (1960) by stating that the drugs
4 at issue in Murphy were tranquilizers rather than
5 antipsychotics, and by stating that these particular drugs
6 were given to the defendant by a fellow prisoner rather than
7 by a physician. The status of the person administering the
8 drug or the specific type of drug in question is not the
9 issue in the present case. The constitutionality of forced
10 medication throughout trial is the issue, which the State
11 conveniently seems to sidestep.

12 The State also attempts to distinguish State v.
13 Maryott, 6 Wash.App. 96, 492 P.2d 239 (1971), by stating
14 that the medication in Maryott was not ordered by the Court.
15 However, the person ordering the medication is not relevant,
16 the forcible administration of medication throughout trial
17 is.

18 The State alleges that Psychiatrist Dr. Edward Quass
19 noted that the doses of Mellaril did not seem to affect the
20 Petitioner. The State alleges this, yet they fail to
21 specify when Dr. Quass made this statement regarding
22 RIGGINS' reaction to the Mellaril. At the Hearing on the
23 Motion to Terminate the Administration of Medication what
24 Dr. Quass stated was that the administration of Mellaril did
25 not affect RIGGINS' competency to stand trial. At trial Dr.
26 Jack Jurasky testified that RIGGINS would resort to hearing
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1 voices and reacting to them without the Mellaril (ROA 248).
2 This statement conflicts with Dr. Quass' statement that the
3 Mellaril did not affect the demeanor of Petitioner RIGGINS.

4 The State further claims that there is evidence that
5 Petitioner's mental capacity was enhanced during trial.
6 Again the State fails to show any proof of their statement.
7 There was no evidence showing that DAVID RIGGINS' mental
8 capacity was enhanced by the Mellaril. RIGGINS, when
9 questioned during trial, claimed that the Mellaril did not
10 help him to understand what is taking place in court on any
11 particular day (ROA 237).

12 Respondent next argues that In Re Prey, 336 A.2d 174
13 (Vt. 1975), is distinguishable because in that case the jury
14 did not know the defendant was under the influence of
15 medication, whereas in the case at bar the jury was informed
16 of the medication Petitioner RIGGINS was being administered.
17 Although the jury in the present case knew of the effects of
18 the medication being administered to DAVID RIGGINS, seeing
19 is believing. If the jury were to have seen RIGGINS' true
20 demeanor, the impact would have been magnified so that it
21 would have played an important part in their deliberations.

22 The State then tries to distinguish Commonwealth v.
23 Louraine, 453 N.E.2d 437 (Mass. 1983) because Massachusetts
24 does not adhere to the M'Naghten test utilized in Nevada,
25 and at the same time refers us to Ford v. State, 717 P.2d
26 27 (Nev. 1986). The issue of whether or not a state adheres
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1 to the M'Naghten test is irrelevant.

2 A defendant's undrugged demeanor which was the same as
3 when he committed an offense is always relevant to an
4 insanity defense, regardless of the test a particular state
5 utilizes in determining such insanity. Petitioner's
6 undrugged demeanor was never demonstrated to the jury.
7 RIGGINS testified at trial that he was not under any
8 medication the night of the killing, but he was presently
9 taking 800mg per day of Mellaril during trial (ROA 235).

10 Respondent's reference to Ford, in this case is
11 inappropriate. Ford supports Petitioner's argument. The
12 Court in Ford sustained defendant's objection to the
13 continuation of mandatory injection of antipsychotic
14 medication during trial, and granted mandamus directing the
15 district court to vacate its order enforcing the
16 administration of such drugs to Mrs. Ford. Id. at 32. The
17 Court's decision denying the State the right to impose
18 continued antipsychotic drug therapy on the protesting
19 defendant was based upon the fact that Mrs. Ford had been
20 determined to be mentally competent to stand trial and was
21 thus outside the purview of Nevada's statutes mandating
22 detention and psychiatric treatment. This case addresses
23 the real issue of the case at bar, not simply Petitioner's
24 competency. RIGGINS was determined to be mentally competent
25 to stand trial, and therefore he should not have been
26 mandatorily inundated with Mellaril against his will.
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1 Although United States v. Charters, 829 F.2d 479 (4th
2 Cir. 1987) was remanded with directions in a rehearing en
3 banc, United States v. Charters, 863 F.2d 302 (4th Cir.
4 1988), it was not reversed, and therefore Petitioner's
5 reliance on the case is not inappropriate. The Court
6 remanded the case with directions to support a procedure
7 which placed the base line decision to medicate with the
8 appropriate medical personnel of the custodial institution.
9 This is not the issue in the case at bar, so the fact that
10 the case was remanded with those particular directions, is
11 irrelevant.

12 The Charters Court also did not overrule their previous
13 holding that a jury instruction cannot ameliorate the
14 negative impact of antipsychotic drugs on a defendant's
15 ability to consult with counsel. Although such an
16 instruction to the jury would reduce the problem of the jury
17 not seeing RIGGINS' true demeanor, it still would not
18 abolish any misimpressions or prejudices they may create
19 about him. The Charters Court also noted that, based in
20 part upon the Supreme Court's recognition in Youngberg v.
21 Romeo, 457 U.S. 307, 102 S.Ct. 2452, 73 L.Ed.2d 28 (1982),
22 of a protectible liberty interest in freedom from bodily
23 restraint, that "the forcible administration of
24 antipsychotic drugs presents a sufficiently analogous
25 intrusion upon bodily security to give rise to such a
26 protectible liberty interest." They then concluded that
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1 Charters possessed that constitutionally protected retained
2 interest.

3 The State cites Parham v. J.R., 442 U.S. 584, 99 S.Ct.
4 2493, 61 L.Ed.2d 101 (1979) as a case with a scheme similar
5 to U.S. v. Charters. Petitioner fails to see the similarity
6 in these two cases. Parham, is a case involving forced
7 admission of minors into mental facilities. Charters is a
8 case pertaining to adults already admitted into mental
9 institutions. Parham is differentiated from the case at
10 bar, as it concerns minors rather than adults, and because
11 it does not even mention the issue of forced medication
12 which is the issue in this case.

13 The State claims that the decision of the Court in
14 State v. Law, 244 S.E.2d 302 (S.C. 1978), as well as the
15 decision of the Court in Mines v. Florida, 390 S.2d 332
16 (Fla. 1980) are consistent with the decisions of the
17 majority of states which have addressed the present issue.
18 However, these two cases do not address the issue of the
19 case at bar, they address the issue of competency. The
20 constitutionality of forced medication throughout trial is
21 the issue in the present case, not the competency of the
22 defendant.

23 The State then argues that doubt as to the sanity of a
24 defendant means doubt in the mind of the trial court rather
25 than the counsel or others. Williams v. State, 451 P.2d 848
26 (Nev. 1969). This is exactly what Petitioner would like the
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trial court and the jury to see. If DAVID RIGGINS had not been forcibly administered Mellaril throughout his trial, the jury would have been able to see the "true" DAVID RIGGINS, and thus make a more knowledgeable decision as to his sanity. However, the jury never did see Petitioner's "true" demeanor, as can be supported by a statement of RIGGINS' roommate. RIGGINS' roommate, Thomas Austin stated during trial that RIGGINS was incoherent a few times, that he would hibernate in his bedroom and when he came out he would be flushed, incoherent, and beady eyed, and that he had a very strong sense of paranoia (ROA 187).

The State then attacks Petitioner's statements regarding RIGGINS' demeanor at trial. Petitioner stated that RIGGINS appeared zombie-like and almost comatose. The State claims that the trial record does not reflect any such observations. Of course it doesn't. Trial records do not usually make editorial comments about the demeanor of the parties at trial.

The State also argues that it would be inconceivable that counsel would proceed with trial if his client was truly comatose and zombie-like. Counsel had no choice in this situation. His Motion to Terminate the Administration of Medication was denied, and he had to proceed with his client "as he was" after being administered the Mellaril. As a result of the medication, Petitioner was unable to effectively assist counsel in his defense. This was

evidenced by Petitioner's failure to read his own statement to the jury at his sentencing. Instead, defense counsel had to read the statement for him, reducing the impact of the statement upon the jurors who ultimately returned with the death penalty (ROA 446).

On page 17 the State again argues that the record does not reflect allegations that RIGGINS looked apathetic and unemotional. The State argues that even if the record did so reflect, given the heinous nature of the murder, such trial demeanor could well be viewed by jurors as supportive of an insanity defense. How can an apathetic and unemotional person charged with murder support an insanity defense? Jurors would look at RIGGINS' calm and controlled demeanor at trial and discount any testimony that he lacked substantial capacity to appreciate the wrongfulness of his conduct at the time of the crime!

Respondent concludes by arguing about defendant's competency to stand trial. Once again, this is not the issue. The State argues that the position adopted by the Nevada Supreme Court in this case was reasonable and not violative of Petitioner's constitutional rights, yet they fail to provide any arguments demonstrating how the constitutional rights of medicated defendants are not violated.

Petitioner RIGGINS' constitutional rights were violated. For instance, the United States Supreme Court in

1 Youngberg v. Romeo, 457 U.S. 307, 102 S.Ct. 2457, 73 L.Ed.2d
2 28 (1982), held that liberty from bodily restraint as well
3 as liberty from chemical restraint, (emphasis added) has
4 always been recognized as the core liberty protected by the
5 Due Process Clause from arbitrary government action. This
6 interest survives criminal conviction and incarceration.

7 The State also failed to note the Fifth Amendment
8 violations that are present in a state's decision to compel
9 one who is presenting an insanity defense, to be medicated
10 in order to stand trial. Such medication and the altered
11 demeanor that accompanies it compels the defendant to be the
12 instrument of his own conviction, and by mandating this
13 altered demeanor the State lightens its own burden at trial,
14 violating the fundamental precept of justice that the State
15 must shoulder the burden of proving its case against the
16 individual.

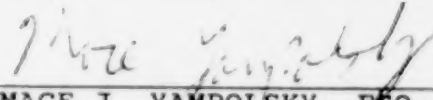
17
18 CONCLUSION

19 The Due Process Clause of the Fifth and Fourteenth
20 Amendments contain a liberty interest in the right to
21 privacy, including the right to make one's own decisions
22 about fundamental matters, the right to personal dignity,
23 bodily integrity, and the right to communicate ideas freely.
24 The decision whether to accept treatment with antipsychotic
25 drugs is of sufficient importance to fall within the
26 category of privacy interests protected by the Constitution.
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1 DAVID RIGGINS was refused this right to make decisions
2 regarding his body, when his request that the administration
3 of medication be discontinued was denied. The trial court
4 allowed Petitioner RIGGINS to be drugged into zombie-like
5 competency against his will, thereby depriving him a "full
6 and fair" trial. This Court should grant the Petition for
7 Writ of Certiorari and reverse the court below, remand this
8 case to the trial court and order a new trial of DAVID
9 RIGGINS in an unmedicated state.

10 DATED this 31 day of July, 1991.

11 Respectfully Submitted,

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NO. 90-8466

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DAVID E. RIGGINS,)
)
Petitioner/Appellant,)
)
vs.)
)
STATE OF NEVADA,)
)
Respondents.) Nevada Supreme Court
) No. 19873

CERTIFICATE OF SERVICE BY MAIL

The undersigned hereby certifies and affirms that I am
an employee of the law office of MACE J. YAMPOLSKY, ESQ.,
Attorney for Petitioner in the above-entitled matter, and am
a person of such age and discrimination to be competent to
serve papers.

That on July 31, 1991, I served a copy of the
foregoing REPLY BRIEF TO BRIEF IN OPPOSITION TO PETITION FOR
WRIT OF CERTIORARI enclosed in an envelope with postage
fully prepaid thereon addressed to the following:

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